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ABSTRACT

The handbook is designed to assist parents of handicapped children with their estate planning and to provide relevant information for other interested persons such as attorneys and advocates. Considered are various ways of providing for handicapped individuals when parents can no longer care for them because of death or long term illness. Major sections address the following areas: estate planning: estate and inheritance taxes: the importance of a will, trusts, and other alternatives to wills: guardianship and conservatorships: and the role of executors, administrators, and attorneys. Appended are a family estate planning inventory, an example of a simple will, the Craven Trust Document, and a list of common legal terms. (SBH)

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ESTATE PLANNING

For Families with Developmentally Disabled Children

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INTRODUCTION

This handbook is designed to assist parents of handicapped sons or daughters with their estate planning. It also provides relevant information for other interested persons, such as attorneys and advocates.

The handbook will describe various ways of providing for handicapped persons when parents can no longer care for them because of death or long-term illness.

The major topic areas are:

- planning an estate
- estate and inheritance taxes
- importance of a will
- planning an estate
- trusts and other alternatives to wills
- guardianship and conservatorships
- the role of executors, administrators, and attorneys

It is to a family's advantage to consult with an attorney regarding estate planning. This handbook alone is not sufficient.

NOTE: Portions of this handbook were adapted from other materials. This is indicated in the text by an asterisk (*).

Estate planning for families with handicapped sons or daughters may be complicated and require specific kinds of information. Families are encouraged to include the services of a knowledgeable attorney.

If a family is unable to locate an attorney, information regarding such legal services can be obtained through the Lawyer Referral Service of the Iowa State Chapter of the American Bar Association at:

1101 Fleming Building
Des Moines, Iowa 50319
Phone #515 - 243-3179

Fees for estate planning vary. Families who cannot afford an attorney may obtain help in civil matters, such as estate planning, from the Legal Services Corporation of Iowa at:

315 East 15th Street
Des Moines, Iowa 50309
Phone #515 - 243-2151

Every family has questions about legal matters, such as wills, tax considerations, and disposition of property.

Estate planning is something a family should use to provide for family members even when very little property or assets are involved. The smaller the estate, the **greater** the need for a well-planned will or other alternative since each dollar lost to taxes or other expenses becomes that much more critical.

Inheritance of property can present problems for a handicapped person in the following ways:

- If he or she is in a state-supported institution or other residential program, the state may bill the handicapped person for the entire length of stay and thus eliminate the assets that the person has inherited.
- If the handicapped person is receiving any type of government benefits, inheriting property or cash of almost any amount may make him or her ineligible to continue receiving these benefits.

Obviously it is in the best interests of parents with handicapped children to prepare a plan for their estate, either in the form of a will or another alternative, such as a trust.

Why Plan for a Family's Estate?

Many people think that "probate court" involves difficult and expensive procedures. This is usually untrue.

No matter what type of estate planning is chosen by a family, Iowa law provides for a probate court that is specifically authorized to oversee the estate and provide for administration of the estate. Whenever property and other assets are involved, the probate court usually becomes involved to protect the interests of the deceased person and his or her heirs, as well as to insure the right of the state to assess taxes on the estate.

"Probate"

Estate and Inheritance Taxes*

The primary concern of any person planning an estate should be to insure that the persons whom he or she wants to share in the estate after death can do just that. After this primary objective is accomplished, the matter of avoiding unnecessary estate and inheritance taxes can be dealt with.

Inheritance taxes vary according to the relationship of the deceased person to the person who inherits the property. For example, inheritance taxes are usually much lower for a surviving wife or children than they are for distant relatives or friends. Every state (except Nevada) has some provision for inheritance taxes. Estate and federal gift taxes can also be affected by charitable bequests made in a will.

The minimum federal estate tax is 3% when the "net" estate value is over $60,000. The maximum rate is 55% for $10,000,000 or more. "Net" means the final value of the estate after personal exemptions and deductions are made for burial and funeral fees, creditors' claims, attorney's fees, and executor's fees.

The law provides time limits for creditors to file claims against an estate for debts for which the deceased person was liable. If these claims are not filed in time, the legal debt is unenforceable. However, heirs cannot receive clear title to property until debts and taxes have been paid, as determined by the probate court.

State inheritance taxes are payable to the state in which the deceased was a resident at the time of death, and/or where the property of the deceased is located — **not** necessarily the state in which death occurred. If the person had two homes, surviving family members would probably be advised to choose the state where the inheritance tax was the **smallest** as the place of official residence.

When retirement income plans are involved, the Pension Reform Act (1974) contains specific provisions relative to the disposition of the proceeds.

Specific information on Iowa estate and inheritance taxes may be obtained through local banks and attorneys and the Iowa Revenue Department (515 - 281-3204).

* Adapted from *Legal First Aid,* Funk & Wagnalls, New York.

Wills*

By technical definition, a will is "the legal declaration of a man's intentions, which he wills to be performed after his death." Although this definition has withstood the scrutiny of lawyers and judges for two centuries, it does not adequately portray the function of a will.

A will should be thought of as a piece of paper which represents a person's life — his work, hopes and dreams. It is not easy in this day of high taxes and rising costs of living and of educating children to accumulate an estate. An estate represents what is left after a lifetime of work, and generally it is accumulated in the hope of passing on some measure of support and comfort to a family. The best way to carry out the hopes and dreams for each member of your family is through the medium of a carefully-drafted will. A will, therefore, is perhaps the most important document that a person signs in his or her lifetime. It serves as a substitute for what would be done for a family if that person were still alive. Special allowances and amounts are provided for homestead, personal property, and family expenses. This means these amounts are exempt from creditors' claims. After consideration of these and payment of debts and taxes, the law provides for very specific distribution of property **if there is no will.** In many cases when there is no will, property may go to someone whom the deceased person would not have ordinarily selected.

The laws affecting inherited property when there is no will are very rigid and inflexible. **No** provisions are made in intestate laws for unusual needs, family heirlooms, family business, friends or other special considerations that could especially affect a disabled family member.

Generally, under Iowa law, when the first parent dies, the surviving parent inherits all property in modest-sized estates. (See current Iowa code for minimum amounts passing to surviving parent). However, when the second parent dies, the surviving children share the family assets equally. State law does not take into account the fact that one of the heirs may be disabled. For this reason, parents who have sons or daughters with handicaps should study the questions at the end of this section and discuss their estate plan with a knowledgeable attorney.

* Adapted, in part, from *Estate Planning,* Foundation for the Handicapped, Seattle, Wash., and *Legal First Aid.*

A will can be a simple document that has been signed in the presence of independent witnesses (independent means that the witnesses cannot share or benefit from the will). In order to be **VALID**, the following provisions must be met:

a) the person making the will must be 18 years of age (except that a married person of any age may make a will);
b) the person must be of sound mind and legally competent;
c) the will must be in writing and dated;
d) the will must be signed by the person making it and should be witnessed by at least two other competent persons who must sign in the presence of each other and in the presence of whomever is making the will.

It is possible for an individual to write a valid will without legal counsel. In most cases, however, this is not the best alternative. A great deal depends on:

- the size and nature of an estate
- the relationship of the person to the designated heirs and other beneficiaries
- the conditions that a person wants listed in the will
- any technicalities and changes in state laws that would affect the validity of a will written by an individual.

Once a will is properly prepared and witnessed, it is valid until the date of the person's death. A will does not become "final" until death. It can be destroyed, cancelled, amended and altered, but it does **not** expire.

A will can be changed as many times as a person wants, as long as the person remains legally competent. For example, changes such as marriage, divorce, death of a beneficiary, etc., may change the intent of a person's will.

A will should be kept in a safe and accessible place. If a will is destroyed or cannot be found, the best and most well-thought-out estate plan may be jeopardized and it is possible that the estate will be viewed under Iowa law as without a will ("intestate"). Usually, a copy of

a person's will is kept in a safe by the attorney who prepared it. Other responsible people, such as executors and administrators, should be advised of the location of a will and how to obtain a copy.

Finally, it is especially important for parents with handicapped sons or daughters to seriously consider the following questions when preparing their will:

- Is your handicapped son or daughter a child or an adult? If an adult, is your son or daughter considered legally competent?
- Does your child receive any type of governmental benefits that could be affected by your will? Does or will the State ever have cause to attach your estate (or your child's share of the estate) to pay for his or her residential support?
- What is the relationship between your other children and your handicapped son or daughter? Will they assume responsibility for your handicapped son or daughter?

Bequests and Gifts

When a will directs that certain specific items (money, property, etc.) are to go to designated persons, that gift is called a bequest. A bequest can be a share of the estate, such as "one-fourth of my net estate to my daughter, Jennifer." Or, a bequest might take the form of a direction to the executor to sell certain property and pay the proceeds to a designated beneficiary.

Obviously, a specific bequest helps to insure that a particular item will pass to a certain individual.

However, there are a few disadvantages to using specific bequests in an estate. For example, a person may have more property to pass after death than has been accounted for in specific bequests. In such instances this surplus property can be passed on to another individual ("residuary beneficiary" or "legatee") as long as the person making the

will has provided for a residuary bequest in a will. Residuary clauses are simple and look like this:

> "I leave the rest, residue and remainder of my estate to _____, _____."

If there is surplus property and no residuary clause in the will, that property passes intestate just as if there were no will.

If the person wants one or more persons to share equally in his estate with no concern as to whom is going to receive what specific piece of property, there is really no need for specific bequests. A simple residuary clause is adequate. It looks like this:

> "I leave the rest, residue and remainder of my estate to _____ and _____, share and share alike."

A person can avoid probate altogether by giving property away before death. If a parent wants his or her children to own property after death, there is really no reason for holding it until then. A person planning an estate can make "timely gifts" and avoid the cost and delay of probate. There are also federal and state gift taxes, but these are usually less than inheritance taxes which would have to be paid if the same gift passed through probate. If a gift is made in this manner as part of an estate plan, the gift **must be** irrevocable and have no "strings" attached.

Trusts

A trust is a relationship whereby one person (the trustee) administers property for the benefit of another person (the beneficiary) according to directions of the person who created the trust. There are several advantages to using a trust:

1. Funds and property are managed to insure that maximum income consistent with protecting the principal is produced.
2. A mechanism is established whereby the trustee pays bills, contracts for services, and if appropriate, gives the beneficiary spending money.

3. The trustee has maximum flexibility in use of the principal and income by having broad powers of discretion and can tailor the use of the funds to meet the individual needs of the beneficiary.
4. On termination of the trust, the remaining funds can be distributed to other family members without incurring death taxes or expenses.

A trust may enable a person to withhold the body of the estate from a child or children whom the parent believes to be too immature or incompetent to properly handle business affairs, large sums of money, or property.

In addition, if appropriate language is used in the trust document the assets of the trust will be protected from collection by the state. Depending on the provisions, a trust can save taxes, avoid probate, and provide a person with some control over his or her assets after death. Anyone eligible to act as an executor is also an eligible trustee.

There are two types of trusts — "testamentary" and "living" or "intervivos." A testamentary trust takes effect only after death, and will not escape probate because it is established as part of a will.

An intervivos trust is established by a living individual who makes a gift of assets to a trustee for the benefit of one or more beneficiaries. It takes effect **during** the individual's lifetime and yet may continue **after death.** The person making the gift (called the trustor) can keep some control over the disposition of the assets; this trust is revocable or semi-revocable. A trust can be established whereby the trustor has no say in the management of the assets after the agreement is drawn and property is transferred. This is called an irrevocable trust and can escape probate and estate taxes. However, the trustor of an irrevocable trust could be liable for gift taxes.

If a trust is used to provide for a handicapped son or daughter as a beneficiary, it is very important that the language of the trust be phrased so as to avoid attachment by the state to pay for cost of maintaining the beneficiary in an institution or group home.

This does not imply that families and parents with handicapped children should avoid their responsibility to the state for support of a handicapped person. Instead, what should be emphasized is that, unless stated appropriately, the language of a trust can place an unfair burden of responsibility on an estate, without regard to a family's previous contributions to the support of the person with handicaps.

The following illustrates this point:

> John Smith, 32 years old, lives in a state institution. He has lived there for 10 years. John's parents were retired. They had very little property besides the home they owned, and did not think a will was necessary. They visited John whenever they could, and paid for all his clothing, gifts, summer camp outings, dental work, etc. When John's parents died, their home was sold for $25,000. John inherited all this money. The state immediately billed John for the cost of his care at the institution at a rate of $57.27 per day for the past 10 years. The money inherited by John was gone. In addition, there is now nothing available to provide for his future.

The Foundation for the Handicapped of Seattle, Washington is a nonprofit organization that has been involved in providing support of handicapped persons following the deaths of their parents. During its sixteen years of operation, the Foundation has assisted families in planning their estates to provide for handicapped sons and daughters.

As part of their voluntary work, the members of the Foundation have developed various documents and trust formats to assist parents and their attorneys.

The Foundation reported the following cases as a further example of the need for appropriate language.

> Jane Jones has cerebral palsy and lives in a nursing home. She has constant medical needs which are paid for by a government program for which she is eligible because she is unable to work. Before Jane's mother died, she prepared a loosely-worded trust to take care of Jane. In the trust document she had used the phrase "for her care and maintenance." The lawyer who prepared the trust and another individual who had advised the mother both testified that the mother had intended the trust to supplement the benefits the daughter was receiving from the government. The mother had placed $40,000 in the trust. The state was able to argue that these funds were available to Jane and it cut off her financial support. Not withstanding this testimony, the court ruled that the assets of the trust were "available" to the daughter and allowed the trust to be invaded to pay for her care and medical needs. Since the daughter is living in a nursing home and has considerable ongoing medical problems, the assets of the trust were quickly consumed. After three years, the $40,000 was gone. All of it was used to pay for Jane's medical needs.

The Foundation stresses the importance of a properly-worded trust and recommends the following language for use in the introductory paragraph of a trust document:

> "The express purpose of this trust is to provide for (name of beneficiary's) extra and supplemental care, maintenance, support and education in addition to and over and above the benefits _____ otherwise receives as a result of _____'s handicap or disability from any local, state or federal government, or from any private agencies any of which provides services or benefits to handicapped persons. It is the express purpose of the trustor to use the trust estate only to supplement other benefits received by the beneficiary."

In addition to using appropriate language in the trust, the Foundation notes that it is also important to include a "spendthrift" clause in the parent's will. To emphasize that no assets are to go directly to the son or daughter, the handicapped child is specifically disinherited in the body of the will with a phrase that may look like this:

> "I specifically make no other provision than that made in this will for _____ except to leave him/her my love and affection knowing _____ will be cared for otherwise, nor any provision for any children hereafter born to or adopted by me."

Finally, the attorneys on the Foundation's Board of Directors, (several of whom are parents of children with handicaps), have prepared an appropriately-worded trust document. A sample of this trust document,(usually referred to as the "Craven Trust"), is included at the end of this handbook.

Finally, it is important to remember that no matter what the provisions of the trust agreement are, probate courts still have jurisdiction over the trust process.

Other Alternatives

In addition to wills and trusts, there are other alternatives to consider in planning an estate. However, some of these alternatives may not be in the best interests of families with handicapped sons or daughters, so the advice of a competent attorney is recommended.

> *Life insurance benefits* are not considered a part of a person's estate if a specific beneficiary is named. Insurance proceeds will pass **into** the estate if the estate is specifically named as a beneficiary **or** if the named beneficiaries do **not** survive the person making the will. Even though life insurance benefits may pass to a beneficiary **without** the necessity of probate, they **are** subject to federal and state inheritance tax laws. These benefits can also be contained in a trust which gives a life estate to the widow or widower with the remainder given to the children after they reach a certain age or after the widow/widower's death. Life insurance trusts are valuable tools in estate planning.

Union death benefits are like life insurance in that they are not considered a part of the person's estate and pass to a stated beneficiary without the necessity of probate.

Joint tenancy is another alternative. Through joint tenancy, two or more persons hold title to property in equal individual interests. Property held in joint tenancy will automatically pass to the surviving joint tenants. This right of survivorship enables a surviving joint tenant to avoid probate; however, he or she still may have to pay some federal or state inheritance taxes on the acquired property. A surviving joint tenant usually must hire an attorney to change the record title of real property from the old joint tenancy to the new form.

Joint tenancy in a safe deposit box gives all of the joint tenants equal access to the contents of the box. However, it does **not** give them equal ownership.

Many married persons own their property in joint tenancy, but joint ownership is not reserved just for married couples. This system of estate planning can be utilized by any group of two or more persons. However, a husband cannot defeat the community or marital property in joint tenancy with a third person. Also, if property is transferred from sole ownership to joint tenancy with another person, a gift tax, depending on the size of the gift, may be assessed.

Joint tenancy is not a substitute for a will. There are certain tax hazards, and joint tenancy will **not** allow a person to avoid inheritance or estate taxes. A well-written will can reduce such taxes.

Another way of transferring property at death without a will is known as a "totten" or "bank account" trust. A bank or savings and loan account is named as the beneficiary. While this is called a trust, the owner of the account can deal with the assets in any manner he or she chooses. There are none of the legal restrictions or obligations of a traditional trust. Arrangements are usually made with a local bank for this type of trustee account without necessarily involving an attorney.

Because the guardianship section of the Iowa Code has recently been revised, readers are encouraged to contact the resources listed in this handbook for more information regarding these changes.

This section will limit its discussion primarily to the **responsibilities** involved in guardianship.

A guardian is someone appointed to take care of a person and/or the property of another individual. One may be the guardian of a minor or an adult who has been judged **not** competent to handle his or her own care.

In order to secure a guardianship, a petition for a court order must be made. Most states allow a child over the age of 14 to nominate or concur in the nomination of a guardian.

Notice of the proceedings and notice of the date of the guardianship hearing must be sent to the minor or the adult and to all other interested parties including parents and other relatives.

The court will listen to any objections of the petition at the time of the hearing. After considering the evidence, the court will order what it deems appropriate.

At the hearing, the person seeking to **become** a guardian must show that he or she is the proper individual to do so and that a guardianship is needed. In the case of a minor, the court appoints a guardian to serve in the child's best interests. If a non-parent petitions the court to be appointed as guardian of a child who already has a parent, the parents must be proved unfit.

A person can make a provision in a will that certain persons be made guardians of minor children if such children are left orphaned. These directions are seriously considered in a court's determination, but are not absolutely final. In addition, the court will also consider the preference of the child and the qualifications of potential guardians.

In order to impose a guardianship on an adult, the court must find that a person is, by reason of old age, disease, weakness of mind, or other causes, unable to properly manage his or her own care or property, and that the person is likely to be deceived or defrauded ("legally incompetent").

Guardianships

Incompetency does **not** mean insanity. Instead, it is **only** an inability to take care of one's **affairs.**

The person ("alleged incompetent") has a right to testify in his or her behalf in order to demonstrate the ability to act rationally and intelligently. However, the person does **not** have a right to request ("petition") the court to impose a guardianship.

When a court appoints a guardian, it normally requires that guardian to post a bond every year to protect the ward.

A guardian has the power to sell property, but real estate can **only** be sold with court confirmation. A guardian is entitled to reimbursement for any expenses incurred in completion of those duties required. A guardian is also entitled to compensation for services.

A guardianship may be terminated after a minor reaches majority or when the minor marries. The guardianship of an adult is discharged upon the restoration of competency. The ward or the guardian may petition the court for a hearing to make this determination.

A guardian may be removed by the court if there is evidence of: 1) waste, mismanagement or abuse of trust; 2) failure to file an inventory of timely accounting; 3) incapacity of the guardian; 4) gross immorality; 5) conflict of interest; 6) conviction of a felony by the guardian; 7) bankruptcy of the guardian; 8) lack of necessity for the guardianship.

Conservatorships

Many states have adopted a system of conservatorships which is an alternative to imposing guardianship upon the property of incompetent adults and minors.

A conservator is a person who is appointed by a court to manage the estate of another person.

The terms "conservator" and "conservatee" are used instead of "guardian" and "ward."

A conservatorship may be the preferred method of handling the estate because the court does **not** have to make a finding of incompetency, but may do so upon petition for involuntary conservatorships. It also protects the dignity of a person with failing faculties who does not wish to be labeled "incompetent."

A conservatee who needs help in the management of his or her affairs can nominate a conservator (there is no provision for this type of nomination in guardianships).

Courts order conservatorships if they find that the proposed conservatee cannot properly manage his or her own care or property. It is considered preferable to a guardianship and should be ordered if it is in the best interests of the parties. In the case where different persons are petitioning the court to be named conservators, the court should choose the individual who will act in the best interests of the conservatee.

There are substantially the same requirements in conservatorships as there are in guardianships in regard to notice of proceedings and hearings, powers of conservators, inventories, accounting, reimbursement and compensation, and discharge and removal.

Power of Attorney

A power of attorney is a document which authorizes one person to act in another person's behalf in personal financial matters.

A general power of attorney authorizes a person to act in all personal financial transactions and affairs. A special power of attorney only authorizes a lawyer to act on specific matters such as maintaining a particular piece of property or signing checks for a limited amount of money or time.

Powers of attorney must contain the following: 1) the name of the person entrusted with the power; 2) the powers and responsibilities given to the person; 3) the signature of the person giving away the power, and,4) the notarization of the signature. The signature required is that of

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that person **giving** the power. If the person goes by another name, nicknames, or initials, these alternatives must also appear on the document.

Powers of attorney are simple, inexpensive documents to prepare. No court supervision is necessary for the person holding the power.

The key element in this agreement is **trust** — you must trust the person to whom you give authority because he or she may have complete use of your assets. However, any misuse or embezzlement by a person holding a power of attorney can be a crime and subject to a civil action for return of the money.

Each estate needs a person to supervise its timely and orderly liquidation. If such person is named in the will, he or she is called an **executor.** If there is no provision for this type of person or if the person dies without a will, an administrator is appointed.

Since it is the duty of the executor to handle the financial aspects of an estate, the executor normally must engage an attorney to file the necessary papers with the probate court to initiate these activities.

The executor, with the attorney's help, must discover and organize all of the assets of the estate, pay all valid creditors' claims, pay any taxes, and manage the assets of the estate while it is in probate and petition the probate court to distribute the assets according to the estate plan or the laws of the state.*

An executor or administrator must also pay all of the valid debts before an estate can close. A creditor must submit a claim within a time limit which is prescribed by the state where the probate is filed (these limits range from three to eighteen months). In Iowa, if a creditor does not present his claim within the time, the debt is considered cancelled ("extinguished").

* The Iowa Revenue Service and the State Bank Association have more information.

Executors are required to post a bond to protect the beneficiaries from the risk of dishonesty. This requirement can be waived by a person in a will when the executor is named. The amount of the executor's bond is normally determined by the amount of cash and other liquid assets in the estate.

The executor is entitled to a fee for services, based on a set schedule established by state law. If extraordinary, unusual or unexpected services are performed, the executor can ask the court for higher fees. After a complete report to the court, the executor can be awarded an amount over and above the statutory fee limit set by the State of Iowa.

The attorney for an estate is also entitled to a fee in the same amount as the executor, and can petition the court for extra fees for extraordinary services. The executor can waive the right to a fee. This is done at times when the executor is a beneficiary and/or a close relation to the other beneficiaries.

In many cases a person making a will can ask an attorney to act as an executor of the estate. It is legal for this attorney to hire a second lawyer to "aid" in the administration of the estate. However, this results in a duplication of fees and an extra charge on the estate which it should not have to bear. The first attorney should be perfectly capable of administering the estate alone. Not all lawyers engage in this practice, but there is nothing but good conscience to prevent it. If a person wants an attorney to act as the executor of an estate, a clause should be put in the will saying that the attorney can act as the executor if he or she does not select another lawyer to act as legal counsel in administering the estate.

Any adult or qualified corporation may act as an executor. Banks and trust companies, which often advertise their services as professional executors and trustees, seldom will handle estates worth less than $50,000.

In most cases, a person will ask a spouse, an adult offspring, or a close sibling to act as executor. It is a good idea to choose an alternate executor in case the first choice cannot serve. The executor should also live in the same state as the person making the will. If the named executor dies before the person making the will, the will should be changed to provide for new primary and secondary choices for executor.

An executor only handles the finances of the estate. He or she does not have the power to become a legal guardian of orphaned or incompetent adult children. It is important to name someone to act as the legal guardian even though this choice is not always binding on the court. The person named as executor does not necessarily have to be the same one who is named as the children's guardian.

Some Important Actions a Family Can Take On Its Own

This handbook has provided a brief description of many of the areas involved in estate planning. No matter what alternative is selected by a parent with a handicapped son or daughter, all families should discuss and systematically plan for their future security and well-being.

Finally, there are several actions that a family can and should take to prepare an estate plan:

- Develop and keep an up-to-date inventory of property and possessions (assets), **and** liabilities in a safe but convenient place.
- List the important family members, people, and groups who would be affected by planning a family estate and how different kinds of estate plans would affect them.

Examples of both of these are included in the Appendix of this Handbook.

For More Information

Information on trusts, estates, Federal and State taxes are usually available through local banks, local attorneys, and the Internal Revenue Service. Specific information regarding the rights and responsibilities of developmentally disabled persons in estate planning can be obtained through:

Iowa Developmental Disabilities Council
523 East 12th Street
Des Moines, Iowa 50319
Phone # 515 - 281-3972

and

Iowa Civil Rights Commission
Protection and Advocacy Division
527 - 10th Street, 8th Floor
Des Moines, Iowa 50319
Phone #515 - 281-8080
1-800-532-1465 (toll free)

Portions of this handbook were adapted from the following resources:

Estate Planning for Parents of Handicapped Children
Foundation for the Handicapped, 1600 West Amory Way, Seattle, WA 98119 (206) 283-4520

Journey's End (film — 16mm, color, 28 min). Encourages long-range planning for death by the preparation of a will, acquiring a knowledge of probate procedures and in specifying funeral arrangements. Mid-America Resource and Training Center on Aging, 5218 Oak Street, Kansas City, MO 64412 (816) 444-1121.

Legal First Aid: Your Complete Basic Guide to the Law. Henry Shain. Funk and Wagnalls, New York, New York 1975. 366 pp. $4.95. ISBN 0-308-10201-0.

Legal Guide. Action for Independent Maturity (AIM), 1225 Connecticut Avenue, N.W., Washington, D.C. 20036.

Understanding the Law: An Advocate's Guide to the Law and Developmental Disabilities. Steven Taylor and Douglas Biklen. Human Policy Press, Syracuse, N.Y.

NOTES:

Appendix: FAMILY ESTATE PLANNING INVENTORY

ASSETS

Money
- Cash on Hand ..... _____
- Checking Account ..... _____
- Savings Account ..... _____
- Certificate of Deposit ..... _____

Real Estate (appraisal value) ..... _____
Stocks (market value) ..... _____
Bonds (market or accrued value) ..... _____
Life Insurance (cash value) ..... _____
Automobiles (market value) ..... _____
Personal Property (household, jewelry, etc.) ..... _____
Other

_____ ..... _____
_____ ..... _____

LIABILITIES

Credit Cards ..... _____
Loans ..... _____
Home Mortgage ..... _____
Others ..... _____

As much of the following information as possible, should be attached to the will.

Mother's Social Security Number # _____

Father's Social Security Number # _____

Military Serial Number of Veteran's "C" Numbers # _____

Railroad Retirement Number # _____

Civil Service Employment Number # _____

Banks, Savings Accounts, Checking Accounts.
(By location and number)

_____ # _____

_____ _____

_____ # _____

_____ _____

Safety Deposit Boxes
(Locations and Numbers of boxes)

_____ # _____

_____ _____

List Insurance Policies –
Life & Medical (Policy Numbers)

_____ # _____

_____ _____

List Interested Relatives

Name _____ Name _____

Address _____ Address _____

Phone # _____ Phone # _____

Name _____ Name _____

Address _____ Address _____

Phone # _____ Phone # _____

Any other information that you feel would help an executor or guardian to do his or her duties in assisting a handicapped son or daughter.

_____

_____

_____

_____

Appendix: SAMPLE OF A SIMPLE WILL

LAST WILL AND TESTAMENT OF
JOHN R. DOE

I, JOHN R. DOE of Omaha, Douglas County, Nebraska, declare this to be my Last Will and Testament and direct the following disposition be made of my estate.

1. I direct that all expenses of my last illness and funeral be paid as soon after my death as conveniently may be done.

2. I give, bequeath and devise all of my estate, real and personal, in which I have any interest at the time of my death not otherwise effectively disposed of, to my wife, BARBARA DOE, if she survives me by thirty (30) days.

3. In the event my wife, BARBARA DOE, does not survive me by thirty (30) days, I then direct that my estate be divided equally amongst our three children, CHAD DOE, RYAN DOE, and JENNIFER DOE and any other child that may be born to or adopted by my wife, BARBARA DOE, and me. If any of our children do not survive me, his or her share of my estate shall then pass to his or her issue by right of representation.

4. I appoint my wife, BARBARA DOE, Personal Representative of my estate and I direct that no bond be required of her as my Personal Representative, and said Personal Representative or any person or corporation appointed in her place and stead, shall have full power, authority and discretion to do any and all things necessary for the complete administration of my estate, including the power to sell at public or private sale, and without order of any Court, any and all real or personal property belonging to my estate, and to settle and adjust any and all claims, debts and demands against or in favor of my estate, as fully as I could do if living.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 19_____, in the presence of the persons whose names are subscribed below as attesting witnesses and who signed this will as witnesses in my presence and at my request.

_____
John R. Doe, Testator

On the date last above written, JOHN R. DOE, known to us to be the person whose signature appeared at the end of this will, declared to us, the undersigned witnesses, that the foregoing instrument was his will and that he was acting voluntarily and of his own free will in the execution thereof. He then signed the will in our presence, and at his request and in his presence and in the presence of each other, we now sign our names as witnesses.

_____ residing at _____
(signature) (street, city, state)

_____ residing at _____
(signature) (street, city, state)

LIVING TRUST
OF
LEAVITT H. CRAVEN and MAUDE G. CRAVEN

THIS AGREEMENT made this 10th day of September, 1975, by and between LEAVITT H. CRAVEN and MAUDE G. CRAVEN, his wife, the TRUSTORS, and the FOUNDATION FOR THE HANDICAPPED, a non-profit corporation organized under the laws of the State of Washington with its principal place of business at 1600 W. Armory Way, Seattle, King County, Washington 98119 the TRUSTEE,

WITNESSETH:

The TRUSTORS have irrevocably conveyed, transferred and delivered to the TRUSTEE the property itemized on the Trust Schedule attached hereto. This property, together with additional property which may hereafter be added to this Trust, shall be held, managed and distributed by the TRUSTEE as hereinafter provided. The TRUSTORS further declare that all property placed within the Trust constitutes community property unless specifically identified as separate property in the Trust Schedule.

RIGHTS RESERVED BY THE TRUSTORS:

1. This Trust shall be irrevocable but the TRUSTORS may add other cash sums or property acceptable to the TRUSTEE to the trust estate.

AUTHORITY OF THE TRUSTEE:

1. Having confidence in the ability of the TRUSTEE to act for the best interest of MARY K. CRAVEN, daughter of the TRUSTORS, and not wishing to limit its ability to do so, TRUSTORS authorize and empower the TRUSTEE to manage and deal with the Trust Estate in all particulars in the same manner and to the extent that TRUSTORS could if living.

2. TRUSTEE shall have authority to consolidate this Trust or any other Trust created by the TRUSTORS in which the FOUNDATION FOR THE HANDICAPPED has been named as TRUSTEE, insofar as the TRUSTEE shall deem appropriate and not in substantial conflict with the expressed terms of any instrument executed by the TRUSTORS, or either of them. The determination by the TRUSTEE as to any consolidation hereunder shall be conclusive on all parties interested in the Trust Estate.

3. TRUSTEE shall have authority to determine what is income and principal; to pay such expenses, costs and taxes, if any deemed by it to be lawfully chargeable to the Trust Estate as well as reasonable compensation to itself as TRUSTEE in accordance with its regular schedule of charges then in force; to apportion all such charges between income and principal as it deems proper; to act without bond and without posting security of any kind; and to exercise all powers granted by law.

Appendix: THE CRAVEN TRUST DOCUMENT

4. TRUSTEE shall have authority to hold, manage, sell, exchange or otherwise dispose of the whole or any part of said Trust Estate upon such terms and conditions and for such price as it may deem best, and may invest and reinvest, loan and re-loan the whole or any part of the money in the Trust Estate, not necessarily for the support of said beneficiary or for the payment of all expenses and charges incident to the Trust Estate, in any securities or other form of investment which TRUSTEE may deem prudent, whether or not the same may be permissible by law for the investment of trust funds, and in all respects the TRUSTEE may generally handle, manage and dispose of the whole or any portion of said Trust Estate in such manner and upon such terms and conditions as TRUSTORS might or could do had this Trust not been created.

5. TRUSTEE shall have authority to employ such agents, attorneys, accountants or appraisers as to it may seem reasonably necessary, to rely upon their legal, tax or other expert advice and to pay reasonable fees for such services.

DIRECTIVES TO TRUSTEE:

1. Upon the death of the TRUSTORS, the TRUSTEE, in its sole discretion, shall use the income and such portion of the principal as to it shall seem fitting and proper for the benefit, support, education, training and the maintenance of MARY K. CRAVEN.

2. So long as the TRUSTORS may live, the TRUSTEE in its sole and absolute discretion may accumulate income, and any Trust income which shall have been accumulated shall be distributed in accordance with the provisions of this Trust.

3. In so applying the Trust Estate for the benefit of said beneficiary it is directed that provision be made for the needs of MARY K. CRAVEN over and above those paid for by the Department of Social and Health Services of the State of Washington, and/or other state or federal agency or department, including those resources and experiences as will contribute to and make her life as pleasant, comfortable and happy as possible. It is the request of the TRUSTORS that the TRUSTEE make arrangements for our daughter, MARY K. CRAVEN, the beneficiary hereunder, to have vacation and recreation trips away from her place of residence, and the reimbursement of not only her expenses but also the expenses, if requested, of the person or persons taking her on such trips, be a proper expenditure from the Trust Estate. It is the further direction of the TRUSTORS, without limiting the use of the funds by the TRUSTEE on behalf of the beneficiary, that sums spent for medicine, surgical and dental care, clothing, recreation, entertainment and "treats" for our daughter, MARY K. CRAVEN, be deemed proper expenditures from the income and principal of the Trust Estate, PROVIDED, that the furnishing of such goods or services shall not be paid for by the TRUSTEE if in the judgment of the TRUSTEE such payment will jeopardize or reduce financial assistance from the Department of Social and Health Services of the State of Washington, and/or any other state or federal agency or department.

4. No interest in the income or principal of the Trust Estate shall be liable for any debt of the beneficiary to the State of Washington or to any other creditor, or subject to the process of seizure of any Court, and the beneficiary shall not have the power to anticipate, alienate or encumber her interest in the Trust Estate or in the income thereof.

5. It is understood the TRUSTEE undertakes to exercise no more than reasonable diligence and shall not be liable for any mistake in judgment or decrease in value or loss in the Trust property, or for any acts or omissions done or permitted by it in good faith, but shall be liable only for any acts or omissions done or permitted by it in bad faith. Said Trust is to be administered free of the control and direction of, and without accounting to any Court or Courts, but complete and open records and accounts concerning such Trust and its income and expenditures shall be kept and maintained, subject to the inspection at reasonable times of anyone having an interest therein. The TRUSTEE shall make an annual accounting to the TRUSTORS, or in case they are both deceased, then to the beneficiary of the Trust, and the TRUSTORS specifically exempt the TRUSTEE from any requirement of any law of the State of Washington in force or which may hereafter be in force concerning the accounting by it to any Court.

6. All discretions conferred on the TRUSTEE by this Living Trust Agreement shall be absolute and their exercise by the TRUSTEE shall be conclusive and binding upon all persons.

7. TRUSTEE shall apply to the appropriate federal agencies and state departments for the payment of such disability awards as MARY K. CRAVEN may be entitled by reason of the handicapping condition with which she has been afflicted, such having been diagnosed and established by competent professional personnel, the records of which are available to such federal and state agencies and departments.

8. The application of the Trust Estate shall continue as provided herein until expended as a result of disbursements by TRUSTEE on behalf of the beneficiary, MARY K. CRAVEN, or until the death of MARY K. CRAVEN, whichever event shall first occur, and if funds remain in the Trust Estate at the death of MARY K. CRAVEN, the TRUSTEE shall immediately distribute such remaining funds and assets in the Trust Estate to the FOUNDATION FOR THE HANDICAPPED for its use in serving mentally and physically handicapped children and adults within the State of Washington.

IN WITNESS WHEREOF, the TRUSTORS have set their hands and executed this Irrevocable Living Trust on the day and year first above written.

§ _____
Leavitt H. Craven - Trustor

§ _____
Maude G. Craven - Trustor

FOUNDATION FOR THE HANDICAPPED

§ _____

§ _____

§ _____
Acceptance Committee

TRUST SCHEDULE

PROPERTY TRANSFERRED TO TRUSTEE UNDER THE TERMS OF THE FOREGOING IRREVOCABLE LIVING TRUST AGREEMENT:

DESCRIPTION	**Trustee's Receipt ***

Sample

RECEIPT is hereby acknowledged for those items which are initialed by an authorized agent of TRUSTEE under *TRUSTEE'S RECEIPT.

FOUNDATION FOR THE HANDICAPPED
By _____

Appendix: COMMON LEGAL TERMS USED IN THIS HANDBOOK

Administration of Estates: The management and settlement of an estate of a deceased or incompetent person.

Administrator: A person appointed by a probate court to administer an estate.

Adult: One who has reached the age of majority and full legal responsibility, as defined in Iowa Code.

Attorney at Law: A person who is formally licensed to give legal advice and try cases in court. In the United States the term "attorney at law" is synonymous with lawyer, counselor at law, and barrister.

Bequest: A gift of personal property in a will; technically the word "devise" means a gift of real property in a will, but "bequest" is often used synonymously with devise.

Capacity: The legal ability to sue or be sued based on a person's presumed ability to exercise his or her rights. For example, minors lack capacity to bring lawsuits on their own behalf. A **guardian ad litem** may be appointed by a court to represent a person lacking legal capacity to sue or be sued. Capacity also refers to legal or actual ability to make other kinds of decisions.

Co-Executor: A person named with one or more persons or corporations in a will to perform the duties of execution of the terms of the will.

Community Property: Generally the property acquired by either a husband or wife during their marriage. Community property is only recognized in eight states.

Contribution: The reimbursement of a person who has paid a debt or judgment of others who are also responsible for its payment.

Dependent: A person who must depend on another for support.

Disinherit: To prevent an heir from obtaining possession of one's property after death.

Distribution: In probate this is the apportioning of property according to the will, estate plan or intestate succession.

Domicile: A person's permanent residence.

Emancipation: The independence of a minor from parental control and custody, when such independence gives the minor the legal status of an adult.

Estate: (1) The property in which a live person has rights or interests; (2) the property left by a deceased or a bankrupt person.

Execution: (1) The fulfilling of any and all legal requirements necessary to make a legal document valid; (2) the enforcement of a legislative or judicial decree or judgment.

Executor (m.) or Executrix (f.): A person who is appointed by a testator to execute the terms and provisions of the testator's will.

Fiduciary: A person who handles another's money or property in a way which involves confidence and trust.

Gift: The transfer of property from one person to another without any contract or consideration.

Guardian: The person who is legally responsible for the care of another person (and/or his or her property) who is incompetent to act for himself. There are many types of guardians (sometimes also called conservators).

Guardian Ad Litem: The person appointed by a court to represent a person lacking capacity ("incompetent") in litigation.

Handicapped Individual: According to federal law, specifically the nondiscrimination provisions of the Rehabilitation Act of 1973, a "handicapped individual" is "any person who (a) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (b) has a record of such impairment, or (c) is regarded as having such an impairment."

Incompetent: A person unable to manage his own affairs and discharge his responsibilities.

Intestate: Dying without a will.

Joint Tenancy: Property owned by two or more persons, all of whom have the right to automatically succeed to the ownership interest of a joint tenant who dies.

Law: A rule of conduct decreed by a judicial tribunal or a formal enactment by a legislative or executive body.

Life Estate: The right of a person to use property for the duration of his life or for the duration of another's life.

Living Trust:	An intervivos trust; a trust created during the lifetime of the person creating the trust.
Net:	The gross amount of assets, recovery or income, less expenses.
Power of Attorney:	A written document which gives one the authority to act as another's agent. The power of attorney may be general, in which case the agent can act in all respects for the principal; or special, in which case the agent can only act in limited circumstances for the principal.
Probate:	(1) The judicial process which proves a will and oversees its execution; (2) the court which oversees the administration of the estates of persons who are legally incompetent — minors, incompetents, and the dead.
Real Property:	Land and whatever is affixed to it.
Spendthrift Trust:	A trust which provides for an irresponsible beneficiary to prevent creditors from garnishing any of the trust.
Testamentary:	Pertaining to a will or an act which plans for the orderly passing of property at one's death.
Testator (m.) or Testatrix (f.):	A person who makes a will.
Trust:	The holding, managing, protecting, and disbursing of property by one person (trustee) for the benefit of another person (beneficiary). The person who creates the trust is called the trustor or a settlor.
Undue Influence:	That amount of improper influence which overpowers the will of another and induces him to act according to the wishes of the person who is exercising the undue influence.
Valid:	Legally binding.
Ward:	A person who is the subject of a guardianship.